

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 13472 of 2006

Date of Decision: 5.12.2007

Union of India

....Petitioner

Versus

Tilak Raj and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA.
HON'BLE MR. JUSTICE MOHINDER PAL.

Present: Shri Puneet Jindal, Advocate, for the petitioner.

Shri V.G. Dogra, Advocate, for respondent No.1.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

HEMANT GUPTA, J.

The challenge in the present writ petition is to the order passed by the learned Central Administrative Tribunal (hereinafter referred to as 'the Tribunal') on 23.5.2006, whereby the Original Application under Section 19 of the Administrative Tribunals Act, 1985, filed by respondent No.1 was allowed and the present petitioner was directed to consider the case of respondent No.1 for compassionate appointment against any suitable and available post like water man etc.,

in Group-D, as per his educational qualification.

Kharaiti Lal, father of respondent No.1 died on 8.5.1973, while working as Pointman under the Railways. Respondent No.1 is his son born on 25.9.1968. He has studied upto 6th Class. He sought appointment on compassionate grounds, vide an application dated 6.4.1988. An affidavit filed by the said respondent at the time of seeking appointment on compassionate grounds has been appended with the writ petition as Annexure P.1. The said claim of respondent No.1 was declined vide order dated 27.6.1989 (Annexure P-2A). Subsequently, respondent No.1 filed another representation for appointment, which was rejected on 31.3.2004, which was made subject matter of challenge before the learned Tribunal.

The entire case of respondent No.1 revolves around the Instructions dated 18.4.1985 appended with the writ petition as Annexure P.4. The said Instructions were Annexure R.2 before the Tribunal. While considering such Instructions, the Tribunal has taken into consideration the fact that the case of a minor dependent has to be kept pending for 5 years after the minor attains the age of 18 years. The learned Tribunal found that the clause in the Instructions that the case has to be kept pending for a period of five years has to be reckoned from the date of attaining the majority and not from the date of death, as sought to be canvassed by the petitioner herein. In view of the said interpretation, the Tribunal issued the directions as mentioned above.

Before, we proceed further, it would be relevant to extract the circular dated 18.4.1985 in extenso:-

“Copy of Railway Board's Letter No. E(NG) II-

84/RC1/86 dated 18.4.1985 addressed to all GMs and others.

Sub: Appointment on compassionate grounds time limit for appointment.

In para 1(2) of the Ministry letter No. E (NG) III-78/RC1/1 dated 30.4.79 on the subject of compassionate appointments, it was laid down that in the case of staff who die in harness and where the widow can not take up employment and sons/daughters are minor, the case may be kept pending till the first son/daughter becomes a major, i.e. attains the age of 18 years. However, such cases can be kept pending for a period of only five years, after which appointment on compassionate grounds will not be permissible. As an exception to this provision, the General Managers may personally authorise a relaxation of this limit of five years in deserving cases of employees whose cases fall under para 4(i) of the same letter.

2. Subsequently, in December, 1980, the Railways Administrations were advised to the effect that in case involving special circumstances they could, with the personal approval of the General Manager, approach this Ministry for relaxation of the limit of five years in other cases.

3. The question of delegation of powers to the General Manager for relaxation of the limit of five years in all cases has been engaging the attention of this Ministry for some time past. It has now been decided that in all cases of death of such employee while in service,

compassionate appointment, as permissible under the except instructions could be approved by the General Managers even beyond the limit of five years, subject to the following conditions:-

- i) The powers shall be exercised personally by the General Manager. It shall not be delegated to a lower authority.
- ii) The cases should not be more than ten years old as reckoned from the date of death.
- iii) The widow of the deceased employee should not have remarried.
- iv) The benefit of compassionate appointment should not have been given at the time of any other member of the family or to a near relative of the deceased employee.
- v) The circumstances of the case should be such as to warrant relaxation of the time limit of five years.
- vi) The reasons for relaxing the time limit should be placed on record.
- vii) The request for compassionate appointment should have been received by the Railway Administration as soon as the son/daughter to be considered for compassionate appointment has become a major, say within a maximum period of six months.”

Learned counsel for the petitioner has vehemently argued that though on the date of death of the father of respondent No.1 i.e. on 8.5.1973, the said Instructions were not in force but even if such Instructions are to be considered, still respondent No.1 could seek appointment only within a period of five years from the date of death of

the bread winner. In any case, the case for appointment on the compassionate grounds can not be considered after more than 10 years reckoned from the date of death relying upon Clause 3(ii) of the said circular. Still further, it is pointed out that the application for compassionate appointment could be submitted within a period of six months from the date of attaining the majority, whereas the present application was filed after more than 18 months of the attaining of majority.

Having heard learned counsel for the parties and having gone through the order passed by the Tribunal, we are of the opinion that the order passed by the learned Tribunal, suffers from patent illegality.

The principles underlying the policy of compassionate appointment have been outlined in the decisions of the Hon'ble Supreme Court in **Umesh Kumar Nagpal v. State of Haryana, 1994(3) SCT 174 (SC)**; **Jagdish Prasad v. State of Bihar, 1996(2) SCT 207** and **Haryana State Electricity Board v. Naresh Tanwar, 1996(2) SCT 778 (SC)**.

In **Umesh Kumar Nagpal's case (supra)**, their Lordships of the Supreme Court held as under:-

“The whole object of grant of compassionate-employment is, thus to enable the family to tide over the sudden crises. The object is not to give member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or public

authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied that but for the provisions of employment, the family will not be able to meet the crisis that job is to be offered to the eligible member of the family.

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The object being to enable the family to get over the financial crisis which it faces at the time of death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.”

In **Jagdish Prasad's case (supra)**, the Hon'ble Supreme Court rejected the claim of a minor dependent to be appointed on compassionate ground after attaining the age of majority by making the following observation:-

“The very object of appointment of a dependent of the deceased employee who died in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment to the dependent of a

deceased government servant which cannot be encouraged, de hors the recruitment rules.”

In **Haryana State Electricity Board's case (supra)**, the Hon'ble Supreme Court reversed some of the orders of this Court directing appointment of dependents of the deceased employees who were minor at the time of the death of the concerned employee. While setting aside the orders of the High Court, the Hon'ble Supreme Court reiterated the law laid down in **Umesh Kumar Nagpal's case (supra)** in the following words:-

“It has been indicated in the decision of Umesh Kumar Nagpal's case (supra) that compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment as an exception to the general rule of open recruitment, is intended to meet the financial problem being suffered by the members of the family of the deceased employee. In the other decision of this Court in Jagdish Prasad's case, it has been also indicated that the very object of appointment of dependent of deceased employee who dies in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years.

Considering the aforesaid judgments, a Division Bench of this Court in **Charanpreet Singh v. Punjab State through Secretary to Government, Punjab Education Department, 2000(2) SCT 444**, found that the circular of the State Government in entitling a minor dependent to apply for ex-gratia employment within six months of his/her attaining majority cannot but be termed as extra liberal. It was found that there is no provision for relaxation of the limit of six months period within which the minor dependent has to submit application after attaining majority. It was held to the following effect:-

“Viewed in the light of the decisions of the Supreme Court and this Court, the circular dated 8.8.1998 issued by the Government of Punjab entitling a minor dependent to apply for ex-gratia employment within six months of his/her attaining majority cannot but be termed as extra liberal. By virtue of this circular the minor dependent becomes entitled to compassionate appointment irrespective of the time gap between the demise of the bread winner and the submission of the application by the minor after attaining majority. However, as there is no provision for relaxation of the limit of six months period within which the minor dependent has to submit application after attaining majority, we cannot issue a writ directing the respondents to entertain the prayer

of the petitioner, who, as per his own showing, had applied for ex-gratia employment after more than nine years of the demise of his mother and almost one year after attaining the age of 18 years. In our considered opinion, the petitioner's failure to apply within six months of his attaining majority has been rightly made basis for declining his prayer for compassionate appointment. Therefore, there is no valid ground to nullify the order passed by respondent No.2.”

Later on a Division of Bench of this Court in **Subhash v. State of Haryana and others, 2005(2) SCT 478**, has held to the following effect:-

“We are of the view that the normal procedure for appointment is open recruitment following a lawful and legal procedure. Such a procedure means that appointment is made after vacancies are identified and then they are advertised calling for applications from the public at large. Upon receipt of such applications, the candidates are screened, interviewed and short-listed in a rational and reasonable manner. Legally there are only two known methods/modes of recruitment. One of them being open recruitment as indicated above and

the other is filling up the vacant posts by promotion. The concept of compassionate appointment is a third source which has been developed on the basis of compassion but such compassion cannot be allowed to gallop like an unruly horse in favour of one or other member of the family of the deceased because if it were to be so allowed, then such a consideration would go against the expectations of millions of other families which have been subjected to similar unforeseen miseries on account of the death of their bread-winner. The concept of compassionate appointment virtually obliterates an elaborate and transparent procedure of open recruitment but in the opinion of this Court, following the observations of the Apex Court, such a procedure cannot be allowed to keep the consideration alive for a period ad finitum. If it is allowed to do so, it will encroach and create inroads into an otherwise transparent procedure commonly known as open recruitment. The effect would be that all of a sudden, when other persons are in the queue waiting for their turn for regular appointment, their legitimate expectations would abruptly be snatched away by a seeker of compassionate appointment at a

time when the consideration for such appointment had become non-existent – the deceased parent having died 4/5 years ago – an event which can hardly be said to be reasonable vis-a-vis persons waiting for regular appointment.

We are, therefore, of the view that there cannot be continuity of cause of action in matters of compassionate appointment.”

In **State of Manipur Vs. MD. Rajadin, (2003) 7 SCC 511**, the Hon'ble Supreme Court was considering the office memorandum issued by the Government of Manipur dealing with the parents, son, daughter etc. of a Government employee, who die in harness leaving behind the family in indigent circumstances. The Court held to the following effect:-

“Admittedly, the respondent's father died before the office memorandum came into operation. In the memorandum a time period is stipulated. Since the Scheme itself was not in operation when the respondent's father died, the time stipulation as provided in the Scheme would not be strictly applicable to the case of the respondent and anyone seeking for relief thereunder has to at least move within the time stipulated commencing from the date of the order. Nevertheless, keeping in view at any rate

the object for which such appointments which are also compassionate appointments are made, the minimum requirement is that the request for appointment should be made as expeditiously as the circumstances warrant. It could not be brought to our notice whether there was any scheme in operation prior to the Scheme of 1984 referred to above. As the appointments of such nature envisaged under the said Scheme are made to tide over immediate difficulties, there is an inbuilt requirement of urgency in making the application. Though it was contended that the respondent was a minor at the time of his father's death, it is to be noted that he was 10 years of age in 1980 when his father died. Even if a reasonable period after he attained majority is taken, certainly the application on 25.7.1997 seeking appointment was highly belated.”

While considering the aforesaid case, the Hon'ble Supreme Court in **Commissioner of Public Instructions and others Vs. K.R. Vishwanath, (2005)7 SCC 206**, has held that the claim of appointment on compassionate ground can be considered on reasonable basis of a sudden crises occurring in the family. It was held by the Hon'ble Supreme Court to the following effect:-

“.....The appointment on compassionate ground

is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.”

In I.G. (Karmik) and others v. Prahalad Mani Tripathi, (2007)6 Supreme Court Cases 162, the Hon'ble Supreme Court has held that the recruitment of the employees of the State is governed by the rules framed under a statute or the proviso appended to Article 309 of the Constitution of India. The exception has been carved out in favour of the children or other relatives of the officer/official who dies or becomes incapacitated while rendering services, in certain circumstances. It was held to the following effect:-

“Public employment is considered to be a wealth. It in terms of the constitutional scheme cannot be given on descent. When such an exception has been carved out by this Court, the same must be strictly complied with. Appointment on compassionate ground is given

only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. When an appointment is made on compassionate ground, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion.

In the present case, the father of respondent No.1 died in the year 1973. Respondent No.1 attained majority on 24.9.1986. the application for appointment on compassionate ground was filed on 6.4.1988. Thus, it is apparent that the application for appointment was made 15 years after the death of the father of respondent No.1. Thus, appointment at such stage is not to mitigate the hardship due to the death of a bread earner in the family. Such appointment could be justified if it was to be granted soon after the death of the father of respondent No.1. Mere fact that he was minor at the time of death of his father would not confer any right on respondent No.1 to seek appointment within five years of his attaining the age of majority. The Instructions (Annexure P.4) have to be interpreted keeping in view the principles in making appointment on compassionate grounds as explained by the Courts. In any case, there was clear stipulation in Clause 3(ii) of the Instructions that though the General Manager has power to extend the time but the cases should not be more than 10 years old as reckoned from the date of death. Therefore, the appointment cannot be sought by respondent No.1 after 10 years of the death of the bread winner.

In view of the said fact, we are of the opinion that the order

passed by the learned Tribunal cannot be sustained in law. Hence, the impugned order is set aside. The Original Application filed by respondent No.1 is dismissed.

(HEMANT GUPTA)
JUDGE

(MOHINDER PAL)
JUDGE

05-12-2007
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